

THE HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,	)	No. CR 18-0092-RAJ
	)	
Plaintiff,	)	
	)	DEFENDANTS' UNOPPOSED MOTION
v.	)	TO RECONSIDER MOTION TO
	)	CONTINUE TRIAL AND PRETRIAL
BERNARD ROSS HANSEN, and	)	MOTIONS DATES
DIANE RENEE ERDMANN,	)	
	)	<b>Note on Motions Calendar:</b>
Defendants.	)	<b>January 18, 2019</b>

**MOTION TO RECONSIDER**

Bernard Ross Hansen and Diane Renee Erdmann through counsel, respectfully move the Court to reconsider its ruling issued January 7, 2019, granting in part, the unopposed motion by the defense to move the trial date to October 21, 2019 and instead, scheduling the trial for June 10, 2019. Dkt. 58. The motion is based on the fact that a June trial date essentially eviscerates the defenses' ability to provide effective representation.

In the original unopposed motion, the defense noted, inter alia, that the additional time requested reflected the time necessary for defense counsel to make critical decisions regarding the need for expert witnesses, and if needed, their own preparation and review. Dkt. 54 at 4. Erring on the side of caution given their ethical and legal responsibility to ensure that constitutional and other legal rights of their clients are protected, including confidential information relevant to the preparation of a defense, defense counsel merely stated that, if

1 further detail was necessary to understand this particular challenge of effective representation,  
 2 the defense would do so in a sealed ex parte filing should the Court require it. *Id.* In hindsight,  
 3 the defense should have made more clear that the trial date and key dates proposed and agreed  
 4 upon with the Government were not only based upon the volume of discovery and issues  
 5 related thereto, but in large part dictated by the guestimate of our expert witness(es) that they  
 6 could not properly assess the case and be available for trial before July 2019.

7 With that fact in mind, the Government and the defense met and conferred about a  
 8 realistic trial date assuming an expert disclosure deadline of July 3, 2019. The parties – in  
 9 agreeing upon an October trial date -- also thought through the other key components of  
 10 effective representation and a fair trial that could be achieved pre- and post-disclosure of  
 11 experts, including the need for rebuttal expert witnesses, if any, Dkt. 56-1, all with hopes of  
 12 reducing any risk that further continuances will be required. Dkt. 54 at 2. *See also* Dkt. 56.

13 A June 10 trial date would require the filing of pretrial motions sometime on or about  
 14 May 3rd. That leaves counsel with the impossible task of completing – in only three months’  
 15 time -- its Taint/Attorney-Client review, as well as the discovery process (without court  
 16 intervention), its independent review of approximately 3,000 audio files, over 180,000 pages of  
 17 discovery -- much of which is in its native form and/or in excel sheets with multiple  
 18 tabs/sheets, without bate-stamps and therefore, difficult to track or catalog, -- multiple hard  
 19 drives, and 1,420 boxes from a Nevada warehouse that was the subject of earlier litigation, and  
 20 based on that review and understanding of the discovery, research the facts and law and discuss  
 21 the same with their respective clients in order to make an informed and intelligent decision in  
 22 how they wish to proceed before filing pretrial motions. Dkt. 54 at 3-4; *see also* Fed. Rule  
 23 Crim. P. 12(b)(3).

24 A June trial date would also require the timely disclosure of expert witnesses before  
 25 trial. But as noted in the declaration of counsel – filed ex parte and under seal in keeping with  
 26 our legal and ethical responsibilities – the defense cannot meet that deadline. And without the

1 assistance of expert(s), the defense cannot effectively unravel how a legitimate company that  
2 was successful for over 20 years, somehow became a Ponzi scheme giving rise to bankruptcy  
3 and criminal proceedings, which would be a miscarriage of justice. 18 U.S.C. §§  
4 3161(h)(7)(B)(i) & (B)(ii).

5 For these reasons, and those stated in the original motion, the defense agree that it is  
6 unreasonable to expect adequate preparation or representation for pretrial proceedings or for  
7 the trial itself within the time limits currently set. 18 U.S.C. §§ 3161(h)(7)(B)(i) & (B)(ii) &  
8 (B)(iv).

9 Finally, a draft of this motion was shared with the Government, represented by  
10 Assistant United States Attorney Brian Werner. AUSA Werner, on behalf of the Government,  
11 responded that the Government is preparing for trial on June 10, 2019. However, the  
12 Government did not oppose the original motion for a continuance and does not oppose this  
13 motion either.

#### 14 CONCLUSION

15 The motion to move the trial date to October, with the proposed scheduling order, was  
16 unopposed by the Government, and based on the parties' thoughtful consideration of the time  
17 necessary for effective preparation of counsel given the complexity of the case, the extraordinary  
18 volume of discovery, the exercise of due diligence and the interests of justice. In hindsight,  
19 however, the defense should have been clearer about how the need for expert witnesses  
20 influenced the proposed trial date and scheduling order agreed upon by the parties. Based on this  
21 additional detail, as well as the facts that remain true in the original motion, the defense  
22 respectfully requests the Court reconsider its ruling granting the motion in part, and setting the  
23 trial and related matters as originally proposed.

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1 At a minimum, the parties request oral argument to address any questions the Court may  
2 have based on the additional information provided or set forth in the original motion.

3 DATED this 18th day of January, 2019.

4 Respectfully submitted,

5 *s/ Jennifer E. Wellman*

6 *s/ Dennis Carroll*

7 Attorneys for Bernard Ross Hansen

8 *s/ Michael G. Martin*

9 Attorney for Diane Renee Erdmann  
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**CERTIFICATE OF SERVICE**

I certify that on January 18, 2019, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of filing to Assistant U.S. Attorney Brian Werner.

/s/ Barbara Hughes  
Paralegal